

June 29, 2007

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND DECISION**

SUBJECT: Department of Development and Environmental Services File No. **E0601151**

**DAVID L. SMITH**  
Code Enforcement Appeal

Location: Approximately 11031 – 164th Avenue Southeast

Appellant: **David L. Smith**  
675 Harrington Avenue Northeast  
Renton, Washington 98056  
Telephone: (425) 235-7693

King County: Department of Development and Environmental Services (DDES)  
*represented by* **Bill Turner**  
900 Oakesdale Avenue Southwest  
Renton, Washington 98055  
Telephone: (206) 296-7084  
Facsimile: (206) 296-6604

**SUMMARY OF RECOMMENDATIONS/DECISION:**

Department's Preliminary Recommendation:	Deny appeal with revised compliance schedule
Department's Final Recommendation:	Deny appeal with further revised compliance schedule
Examiner's Decision:	Deny appeal with further revised compliance schedule

**EXAMINER PROCEEDINGS:**

Hearing opened:	June 7, 2007
Hearing closed:	June 7, 2007

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.  
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. On February 7, 2007, the King County Department of Development and Environmental Services (DDES) issued a Notice and Order to David L. Smith that alleged a code violation on property located at approximately 11031 – 164th Avenue Southeast in the unincorporated Coalfield area east of Renton. The Notice and Order cited Mr. Smith and the property with the following violation of County code:
  - A. This fire damaged site has an accumulation of assorted fire residue, rubbish, salvage and debris, including but not limited to computer parts damaged in the fire and constitutes a nuisance and a hazard in violation of Section 21A.32.230 of the King County code and Sections 3.02.1 and 3.07 of the 2003 International Property Maintenance Code.

The violation was required by the Notice and Order to be corrected by removal of the debris, rubbish and salvage from the premises by March 14, 2007, with disposal at an approved facility.
2. Mr. Smith filed a timely appeal of the Notice and Order, not contesting the basic charge of violation but citing a requirement for additional time for correction due to poor weather conditions (in the winter, at the time of the appeal) for removal, additional time needs for conducting the removal, difficulties in researching appropriate disposal facilities and locations, and a desire to obtain alternative access to the fire site via an adjoining County-owned property to facilitate the removal.
3. The violation cited by the Notice and Order issued by DDES is demonstrated by a preponderance of evidence in the record to have occurred.
4. The recent fire which damaged the material onsite and caused it to become rubbish and debris (though perhaps not without recyclable value) was set by arson committed by unknown persons. Nevertheless, Mr. Smith as property owner is ultimately responsible for the violation on his property cited by the Notice and Order.
5. There is great concern held by DDES and other governmental agencies that the deposit of the fire-damaged debris on the site in an unprotected and/or undisposed manner will lead to leaching of hazardous materials into groundwater and a nearby stream. Accordingly, at hearing DDES orally amended its recommendation regarding the compliance requirements established in the Notice and Order and stated its desire to go to a multi-step process wherein the first and sole specific compliance requirement is to remove the debris and surface materials from the ground as soon as possible (within 60 days) and place it in appropriate storage containers such as dumpsters. That would preclude further leaching and groundwater/stream contamination. DDES intends to follow up such action, possibly with a Supplemental Notice and Order, with further compliance requirements and/or formal abatement proceedings. DDES and the aforementioned agencies with concern are assisting Mr. Smith in researching the selection of an appropriate approach and obtainment of the financial wherewithal to abate and mitigate the violation and its effects.

## CONCLUSIONS:

1. The charge of violation in the Notice and Order is shown by a preponderance of the evidence to be correct and is therefore sustained. The Examiner shall implement DDES's recommended revised compliance requirement as an interim measure, and accordingly shall retain jurisdiction over the case in the event that the Notice and Order is supplemented. In that way, the matter may be brought back to hearing so that further compliance measures may be discussed and addressed in a further Examiner Order, without necessitating further formal appeals by Appellant Smith.

## DECISION:

The appeal is DENIED and the Notice and Order sustained, except that the compliance requirement shall be revised as stated in the following Order and the matter retained under Hearing Examiner jurisdiction.

## ORDER:

1. The subject fire residue, rubbish, salvage and debris on the surface of the property which remain from the recent fire on the site and which constitute a nuisance and hazard shall be placed within suitable storage containers which preclude leaching onto the ground *by no later than August 31, 2007*.
2. No penalties shall be assessed by DDES against Mr. Smith and/or the property if the above deadline is complied with. If it is not, DDES may impose penalties against Mr. Smith and/or the property retroactive to the date of this order, as provided by County code.
3. The Examiner retains jurisdiction over the subject case, so that in the event of a Supplemental Notice and Order the matter may return without further formal appeal for further review of compliance measures for ultimate resolution of the violation. If a Supplemental Notice and Order is issued in this matter, **within 15 calendar days of the date of issuance** Appellant Smith may request in writing (facsimile or e-mail acceptable, with copy to DDES) that the Examiner convene a hearing to review the compliance requirements and schedule.

ORDERED June 29, 2007.

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Peter T. Donahue  
King County Hearing Examiner

TRANSMITTED June 29, 2007 via certified mail to the following:

David L. Smith  
675 Harrington Ave. NE  
Renton, WA 98056

TRANSMITTED June 29, 2007, to the following parties and interested persons of record:

David L. Smith 675 Harrington Ave. NE Renton WA 98056	Elliott Zimmermann Dept. of Ecology 3190 - 160th Ave. SE Bellevue WA 98008-5452	Deidre Andrus DDES/LUSD MS OAK-DE-0100
Elizabeth Deraitus DDES/LUSD MS OAK-DE-0100	Sue Hamilton DNRP/WLRD MS IHW-NR-0100	Jo Horvath DDES/BSO MS OAK-DE-0100
Lamar Reed DDES/LUSD MS-OAK-DE-0100	Bill Turner DDES/LUSD MS OAK-DE-0100	Toya Williams DDES/LUSD MS OAK-DE-0100

### NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding Code Enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE JUNE 7, 2007, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0601151.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Bill Turner representing the Department, the Appellant David Smith, and Elliott Zimmermann and Sue Hamilton.

The following Exhibits were offered and entered into the record:

Exhibit No. 1	DDES staff report to the Hearing Examiner for June 7, 2007
Exhibit No. 2	Copy of the Notice & Order issued February 7, 2007
Exhibit No. 3	Copy of the Notice and Statement of Appeal received February 21, 2007
Exhibit No. 4	Copies of codes cited in the Notice & Order
Exhibit No. 5	Computer log notes
Exhibit No. 6	Photographs (4 color copies) of subject property taken 5-9-07 by Bill Turner
Exhibit No. 7	Memo from Emery Bayley of the Environmental Coalition of South Seattle dated April 13, 2007
Exhibit No. 8	Map of subject area labeled "ARSON Investigation - 20' x 30' Shed w/Computers" dated 11/03/2006
Exhibit No. 9	Photograph (1 color copy) of subject property dated 6-7-06 ( <i>oral statement at hearing indicates it was taken on 6-7-07</i> )
Exhibit No. 10	Draft meeting minutes of May 18, 2007, re: the David Smith property
Exhibit No. 11	Email chain between Eric Ferguson and Richard Jack dated May 17 and May 21, 2007

PTD:ms  
E0601151 RPT